IN THE

SUPREME COURT OF THE

UNITED STATES

OCTOBER TERM, 1978

No. 77-1427

NEW YORK CITY TRANSIT AUTHORITY, ET AL.,
Petitioners,

v.

CARL BEAZAR, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE AMICUS CURIAE WESTERN LAW CENTER FOR THE HANDICAPPED

MARILYN HOLLE
MARY-LYNNE FISHER
WESTERN LAW CENTER FOR
THE HANDICAPPED
849 South Broadway
Suite 1201
Los Angeles, California
90014

STUART P. HERMAN
9601 Wilshire Blvd.
Beverly Hills, California
90210
Of Counsel

Attorneys for Amicus Curiae

TABLE OF CONTENTS

Cases: Page

Constitution:

Statutes and Regulations:

Rehabilitation Act of 1973, as amended

Regulations, HEW

Other Authorities:

INTEREST OF AMICUS CURIAE

The Western Law Center for the Handicapped is a public interest law firm providing legal services to individuals and groups with legal problems related to their disability, and to organizations of disabled persons which advocate enforcement of the human rights of persons with disabilities.

A person with a history of drug abuse and who is a methadone program participant is a handicapped person within the meaning of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Sec. 706(6). Like those whose disability is a history of drug abuse, many persons with other disabilities are subject to government classification on the basis of their disability. Like those whose disability is a history of drug abuse, many persons with other

disabilities are subject to classifications based on myths, stereotypes and misconceptions about the disability. Until January of this year, a person in a wheelchair was barred from sitting on a jury in California. Chapter 301 (1978), amending Sec. 198 and 602 of the Calif. Code of Civ. Proc. Until recently a number of states prohibited an epileptic from marrying; as recently as 1976 five states listed epilepsy as a reason for involuntary sterilization. Legal Rights of Persons with Epilepsy, p. 6, 10, Epilepsy Foundation of America (1976).

The decision in this case will define the minimal constitutional protections available to persons whose disability is past heroin addiction with respect to arbitrary and irrational governmental classifications based on that disability. Such definition will

also be relevant to persons with other sorts of handicapping disabilities.

SUMMARY OF ARGUMENT

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794, imposes an obligation on most public employers not to discriminate on the basis of handicap and further to accommodate to the handicapped person's limitations unless to do so would cause undue hardship. The obligations imposed are substantially broader than those imposed by the Fourteenth Amendment. Since this case went to trial it has been established that members of the plaintiff class are haicapped persons and protected by the Act from employment discrimination, and further that there is a

private right of action to enforce the Sec. 504 nondiscrimination obligations. Therefore the precedential value of the decisions below is necessarily limited and this Court should reconsider its grant of certiorari on the constitutional issue.

Assuming this Court does not reconsider its grant of certiorari, this Court should affirm the holdings of the courts below that

"the blanket exclusionary policy against persons on methadone maintenance is not rationally related to the safety needs, or any other needs, of the [Transit Authority]" and therefore violates the Fourteenth Amendment's Due Process and Equal Protection Clauses. Beazer v. N.Y.C. Transit Authority, 399 F. Supp. 1032, 1036 (S.D.N.Y. 1975). In reaching its conclusion that the classification was irrational, the District Court used

the traditional rational basis test to examine the largely uncontroverted evidence overwhelmingly supporting plaintiffs' position. Because of the overwhelming evidence showing the irrationality of the classification at issue, the District Court did not reach the question of whether, because methadone program participants share characteristics in common with traditionally suspect classifications, the trial court should have examined the classifications with greater scrutiny than that required by the traditional rational basis test. However, any question concerning the rigorousness of the test used in determining the rationality of the classification at issue should be resolved in favor of respondents because of the presence of suspect classification indicia. Finally, the classifications at issue are so sweeping and

irrational that they violate the Due Process Clause

ARGUMENT

I. THIS COURT SHOULD RECONSIDER ITS GRANT OF CERTIORARI ON THE CONSTITUTIONAL QUESTION IN VIEW OF THE REHABILITATION ACT OF 1973.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794, forbids virtually all public employers from maintaining employment policies which categorically exclude past drug users. The act provides that "[n]o otherwise qualified handicapped individual...-shall, solely by reason of his handicap...be subjected to discrimination under any program or activity receiving federal financial assistance." An opinion of the United

states attorney general, dated April 12, 1977, and based on an extensive analysis of legislative history, concluded that drug addicts are "handicapped individuals" protected by the antidiscrimination provisions of 504. See Regulations, Department of Health, Education and Welfare, 42 Federal Register 22676, 22686 (May 4, 1977). Amendments to the Act passed by Congress on October 15, 1978, and, presently awaiting the President's signature, eliminate any possible doubt whether Congress intended to include drug users within the definition of handicapped persons. [1]/ A narrow exception was drawn to exclude "active" drug addicts from those protected against employment (including the discrimination. Appendix.

1/ Conferences Report on H.R. 12467

The Rehabilitation Act, as implemented by regulations, [2]/ imposes on employers far greater obligations necessity of making reasonable accommodation to the needs of handicapped persons unless such accommodation would involve undue hardship to the employer) than those resulting from the limited constitutional protection under the 14th Amendment. At the time of trial, plaintiffs' private right of action in a class case under 29 U.S.C. Sec. 794 was uncertain.

But subsequent cases-Davis v. Bucher, 451 F. Supp. 791 (E.D. Pa. 1978), Drennon v. Philadelphia General Hospital, 428 F. Supp. 809 (E. D. Pa.

2/ 42 F.R. 22676 (5/4/77); 43 F.R. 2132 (1/13/78).

1977), Lloyd v. Regional Transit Authority, 548 F. 2d 1277 (7th Cir. 1977), as well as the pending 1978 amendments to the Rehabilitation Act, have clarified that a private right of action for attacking systemic discrimination exists following resort to available administrative processes. Thus it is unlikely that lower courts will be required to reach the Constitutional questions here posed because of the broader reach of the statutory protections. Therefore, the petition for Certiorari should be dismissed as improvidently granted.

II. THIS COURT SHOULD AFFIRM THE HOLDING THAT THE TRANSIT AUTHORITY'S POLICY OF EXCLUDING METHADONE PROGRAM PARTICIPANTS FROM CONSIDERATION FOR EMPLOYMENT VIOLATES THE DUE PROCESS AND EQUAL

PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT.

The Transit Authority barred all methadone program participants from consideration for any of its approximately 47,000 jobs. The District Court applied the traditional rational basis test when it concluded, after exhaustive inquiry, that

"the blanket exclusionary policy against persons on methadone maintenance is not rationally related to the safety needs, or any other needs, of the TA.

"I have concluded that the policy is the result of a misunderstanding by the TA regarding the nature and effect of methadone maintenance." Beazer v. N.Y.C. Transit Authority, 399 F.Supp 1032, 1036, (S.D. N.Y. 1975)

That the District Court used the traditional rational basis test was underscored by the Second Circuit when it found the $50,710 "premium" attorney fees awarded to be an abuse of

discretion because the legal issues were relatively simple and there was no dispute over the governing constitutional standards. Beazer v. N.Y.C. Transit Authority, 558 F.2d 97, 100 (2d Cir. 1977.)

A. The Transit Authority's policy was properly held to be irrational.

Whether a governmental classification meets the requirements of the Equal Protection Clause depends on whether the classification rationally furthers the purpose identified by the State. Mass. Board of Retirement v. Murgia, 427 U.S. 307, 317 (1976). The District Court below, in attempting to apply the standard in this case, became concerned after six days of trial about the Transit Authority's failure to produce evidence showing justification

for defendants' blanket exclusion. In order to determine whether a rational basis for the policy could be found in evidence theretofor not advanced by the Transit Authority, the court requested the parties to suggest additional witnesses and eventually heard nine more days of testimony.

"But the crucial point made so strongly by plaintiffs' witnesses was never convincingly challenged - that methadone as administered in the maintenance programs can successfully erase the physical effects of heroin and permit a former heroin addict to function normally both mentally and physically. Beazer v. N.Y.C. Transit Authority, supra at 1037.

The court also found "that a person maintained on a constant dose of methadone can perform normally by every standard that relates to employability, and that, except in rare cases, there are no side effects making such a person incapable of being employed." supra at 1045.

The court further found that determinations on the employability of particular methadone program

participants could be made on the same basis that determinations were made with respect to any other applicant or employee. supra at 1048-51.

The court below did indicate, however, that the Transit Authority could impose reasonable rules about the jobs for which it would consider methadone maintained persons and about what methadone maintained persons it would consider - i.e., conditioning consideration on successful performance in a methadone program for a period of time such as a year; excluding such safety sensitive jobs as subway motorman, subway conductor, subway towerman, bus driver, and jobs dealing with high voltage equipment. Supra, at 1058.

The District Court thus in effect held that the Transit District was not forclosed from making classifications

which satisfied the traditional rational basis test in that they were rationally related to its legitimate needs. Other courts have invalidated overly broad classifications under traditional rational basis test. In Davis v. Weir, 497 F.2d 139 (5th Cir. 1974), the court found that a practice rejecting water service applications until all accrued debts at the premises were extinguished was overly broad in that it included within its ambit innocent tenants in addition to owners and landords who were the defaulting debtors. In Slochower v. Board of Education, 350 U.S. 551, 558 (1956), the court found a statute to be overly broad because it permitted plaintiff's discharge to be based on events entirely outside the scope of the city's legitimate interest.

1. The District Court's holding was consistent with this Court's reasoning and holding in Murgia

Petitioners' reliance on Mass. Board of Retirement v. Murgia, 427 U.S. 307 (1976), to support their position is misplaced. Petitioners have not confronted the basic differences in the two cases. In the case at bar, plaintiffs proved that the policy adopted by the transit Authority was irrational in that it was based on assumptions inapplicable to the class as a group, and presented exhaustive - and largely uncontroverted evidence in support of their assertions. By way of contrast, Murgia did not contest the rationality of the classification itself in the absence of individual tests, but rather challenged the lack of an opportunity to show that the

generalization that may have been applicable to the group to which he belonged - persons over the age of 50 - were not applicable to him. supra, at 310-311 and n.10. Nowhere did he contend, let alone prove, as did the plaintiffs in the case at bar, that the members of his group who were excluded from employment could perform the duties of the job as well as the members of those groups who were not excluded from employment. Where a classification itself is found not to be a violation of the Equal Protection Clause, a violation will not be found merely because such classification works hardships in individual cases, See Califano v. Jobst, _____ U.S._____, 95 S.Ct. 95, 99 (1978). The instant case is further distinguishable from Murgia. In Murgia the court, citing Dandridge v. Williams, 397 U.S. 471, 475 (1970), noted

"the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one. Perfection in making the necessary classifications is neither possible nor necessary." Supra, at 314.

At note 7, at p.314, the Murgia court outlined the complex of problems and factors that were involved in the legislature's line-drawing process in fixing and reviewing the mandatory retirement age for uniformed police officers. The Transit Authority is a

"'body corporate and politic constituting a public benefit corporation' (N.Y. Publ. Auth. Law Sec. 1201), autonomous in its operations. The members of the Authority are appointed by the Governor, but once appointed they serve for a fixed term of eight years. Id. Sec. 1262.b and 1263.1. The Authority can ... promulgate its own rules for both its internal management and the use of transit facilities under its jurisdiction Id., Sec. 1204.4, 1204.5-a." (Respondent's brief in opposition to certiorari, p. 12)

The classification at issue was not the result of a legislative line drawing

but rather the procrustean application of an agency rule excluding persons who use narcotics to persons in a methadone maintenance program. Courts have not always accorded deference to an unbuttressed agency classification. In Hampton v. Wong, 426 U. S. 88 (1976), this Court noted that "[a]rguably .. [the Civil Service Commission's] administrative convenience may provide a rational basis for a general rule' excluding all noncitizens [from federal civil service] when it is manifest that citzenship is an appropriate and legitimate requirement for some important and sensitive positions." The Court found no justification for such a blanket exclusion where there was no indication the Commission had compared the relative desirability of a simple exclusionary rule with the value of enlarging the pool of eligible

employees, and no indication of the administrative burden of establishing the job classifications for which citizenship is an appropriate requirement. Id.,115. However, upon remand to the District Court and following an intervening Executive Order limiting federal civil service to citizens, the court determined that the rule substantially furthered important federal interests. Id. on remand, 435 F.Supp. 37 (N.D. Calif. 1977)

B. Although the Transit Authority policy at issue was properly invalidated under the Equal Protection Clause as being totally irrational, the presence of indicia associated with suspect classifications would have justified closer scrutiny.

The District Court, in finding the petitioner's policy of excluding all methadone maintained persons from employment totally lacking in rationality, did not reach the question of whether a more rigorous standard of scrutiny would apply. However, some of the indicia associated with "suspect classes" are present in the case at bar, and to the extent they are present may justify closer scrutiny of the disability classification at issue in this factual context of this case.

Therefore any question concerning the test used should be resolved in favor of respondents.

The indicia associated with a suspect class was originally set forth in U.S. v. Carolene Products, 304 U.S. 144, 153 n.4 (1938), and explained in San Antonio Independent School District v, Rodriguez, 411 U.S. 1, 28 (1973). A suspect class cannot be large, diverse or amorphous, but is one "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." Additional insights as to the indicia of a suspect class appear in Frontiero v. Richardson, 411 U.S. 677, 685-686 (1973), where the plurality opinion notes the common acceptance of

sterotypes regarding women's natural role, the high visibility of the characteristic, the immutability of the characteristic and the fact that it frequently bears no relation to ability to perform or contribute to society. [3] Most recently in Board of Regents v. Bakke, _____ U.S.____, 98 S.Ct. 2333, 2748-49 (1978), Mr. Justice Powell wrote,

> "Nor has this court held that discreteness and insularity constitute necessary preconditions to a holding a particular classification is invidious. [footnotes omitted] See, e.g. Skinner v. Oklahoma, 316 U.S. 535, 541 (1942); Carrington v. Rash, 380 U.S. 89, 94-97 (1965). These characteristics may be relevant in deciding whether or not to

3/ The Frontiero plurality opinion also suggests the pervasiveness of stereotyped or paternalistic conceptions that a handicapped person's ability to perform or contribute to society is limited necessarily: "...what differentiates sex from such nonsuspect statutes as intelligence or physical disability, and aligns it with the recognnized suspect criteria, is that the sex characteristic frequently bears no relation to ability to perform or contribute to society." Supra at 686.

add new types of classifications to the list of 'suspect' categories or whether a particular classification survives close examination. See, e.g. Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 3, 313 (1976) (age); San Antonio Indep. School Dist. v. Rodriguez, 411 U.S. 1, 28 (1973) (wealth); Graham v. Richarson, 403 U.S. 365, 372 (1971)"

Former addicts, including those maintained on methadone, have been subjected to a lengthy history of purposefully unequal treatment, particularly in the field of employment. 4/

4/ See, e.g., Interim Report of the Temporary State Commission to Evaluate the Drug Laws, "Employing the Rehabilitated Addict", (New York State Legislative Document No. 10, at 27 (1973) (Plaintiffs' trial exhibit 18) ("widespread irrational discrimination on an unyielding and categorical basis"); Brecher, Licit and Illicit Drugs 148 (1972) ("Systematic

The stereotyped conceptions about former heroin addicts, including those on a methadone maintenance program, and their immutable moral unfitness, are reflected in the District Court's report of trial testimony of petitioners' medical director, the only medical expert called by petitioners at trial

"...[When a man goes on heroin there is 'some deficiency somewhere' which presumably persists thereafter, particularly while the person needs the 'crutch' of methadone maintenance."

The court noted

"the presumption that heroin addiction invariably stems from some character defect, making a person more or less permanently unemployable, cannot be supported. Beazer v. N.Y.C. Transit Authority, supra, 399 F. Supp. at 1049.

The mere status of being a heroin addict, apart from the purchase or use of the drug, was punishable as a crime

(footnote 4 continued)
Discrimination against [former addicts]").

in many jurisdictions until this Court voided such laws in Robinson v. California, 370 U.S. 660 (1962). But assumptions concerning the inherent criminality are not limited to statutes. The Transit Authority's chief executive testified before trial that in a retail chain where he formerly worked there was "a high incidence of theft" ... "traceable in large measure to persons with histories of past or present drug usage." (Beazer v. New York City Transit Autnority, Brief for Defendant-Appellants, filed in the Second Circuit 2/28/77. p.7) Assuming arguendo that such testimony is correct, the exclusion of all persons maintained on methadone from all public employment cannot rationally be predicated on the criminality of some drug addicts. As the District Court noted, the Transit Authority can use its

regular processes to screen out individuals who are otherwise undesirable.

Amicus does not here contend that class of methadone maintained persons should be treated as sharing the indicia of a suspect class in all legislative classifications. The idea that classification can be suspect in some circumstances but not in others was explicitly recognized by this Court in Foley v. Connelie, ____ U.S. _____, 98 S.Ct. 1067 (1978), where it was held that alienage, previously accorded the status of a suspect class in circumstances involving welfare (Graham v. Richardson, 403 U.S. 365 (1971), education (Nyquist v. Mauclet, 432 U.S. 1 (1977) and general public employment (Sugarman v. Dougall, 413 U. S. 634 (1973), is not entitled to such treatment in the area of employment in law

enforcement. Quoting In re Griffiths, 413 U.S. 717 (1973), which involved admission of aliens to the bar, the Court found justified the earlier application of strict scrutiny because the exclusions "struck at the non-citizen's ability to exist in the community, a position seemingly inconsistent with the Congressional Determination to admit the alien to permanent residence." Foley, supra at 1070.

Such a rationale is particularly applicable to the case at bar where the exclusion from a broad range of public employment likewise strikes at the ability of the rehabilitated drug addict to exist in the community, which is inconsistent with the Congressional determination that persons with a history of drug addiction are handicapped persons in need of

compelling that only a rational basis for the classification need be shown. [5]/

5/ Any argument that might be made concerning the similarity between law enforcement positions and those of Transit Authority conductors and motormen on the issue of public safety is specifically forclosed by the District Court's exemption of such "safety sensitive" position from its order. Beazer, supra, at 1058.

C. The Transit Authority's Exclusionary Policy is so irrational and sweeping that it violates the Due Process Clause

At issue here is a policy which, like the sweeping exclusion of aliens from federal civil service comdemned by this Court in Sugarman v. Dougall, 413 U.S. 634 (1973), excludes class members from consideration for any of the Transit Authority's 47,000 jobs. This Court has invalidated classifications which restricted the ability to earn a livelihood - Schware v. Bd. of Bar Examiners, 353 U.S. 742 (1957), Bell v. Burson, 402 U.S. 635 (1971) - and in Hampton v. Wong, 426 U.S. 88, 102-103 (1976), characterized access to public employment as a "liberty interest".

This Court has held that where the breadth of the classification cannot be

justified in terms of the legitimate articulated state interest, and where there is no procedure for rebutting tHe presumption created by the classification, then such classification violates the Due Process Clause. The standards were articulated in two cases which Petitioner concedes involved irrational classifications (Brief for Petitioners, p. 38): U.S. Dept. of Agriculture v. Murry, 413 U.S. 508 (1972) and Vlandis v. Kline, 412 U.S. 441 (1972. In Murry this court examined the government's articulated bases for excluding certain households from food stamps and concluded,

> "Tax dependency in a prior year seems to have no relation to the need of the dependent in the following year ... We have difficulty in concluding that it is rational to assume that a child is not indigent this year because the parent declared the child as a dependent in his tax return for the prior year... We conclude that the deduction taken for the benefit of the parent in the prior year is not a rational measure of the

need of a different household with which the child of the tax-deducting parent lives and rests on an irrebuttable presumption often contrary to fact." (Emphasis added) supra at 513, 514.

Again in Vlandis v. Kline, 412 U.S. 441 (1972), this court examined the relationship of a statute which decreed that certain university students remain nonresidents during their entire course of study to the state interest articulated to determine whether those interests were furthered by such statute:

"The state offers three reasons to justify that permanent irrebuttable presumption. ...

"In sum, since Connecticut purports to be concerned with residency in allocating the rates for tuition and fees in its university system, it is forbidden by the Due Process Clause to deny an individual the resident rates on the basis of a permanent and irrebuttable presumption of nonresidency, when that presumption is not necessarily or universally true in fact, and when the state has reasonable alternative means of making the crucial determination." supra, at 448, 452.

And in Cleveland Bd. of Educ. v. La Fleur, 414 U.S. 632, 644-646 (1973) the Court found violative of the Due Process Clause provisions calling for mandatory termination from teaching at the 5th and 6th month of pregnancy where, while some women would physically unable to work past the cut-off date, large numbers of women would be physically capable of continuing, and where there were alternative means for determining physical fitness. However, the court, at footnote 13, indicated that where the school district could show a rational basis for a classification, it would not be required to provide individualized determinations. [6]/

6/ See also Cleveland Bd. of Educ. v. La Fleur, supra, 414 U.S. at 653. "Whether the challenged aspects of the regulation constitute sex classifications or disability classifications, they must at least rationally serve some legitimate articulated or obvious state interest.

Petitioners in their brief (Petitioners brief, p.38.) rely on Weinberger v. Salfi, 422 U.S. 749, 785 (1975) when they conclude that they are not required to make individualized determinations when they "can rationally conclude" not only that generalized rules are appropriate to its purposes and concerns, but also that the difficulties of individual determinations outweigh the marginal increments in the precise effectuation of [governmental] concern which they might be expected to produce." Leaving aside the issue of the rationality of petitioners' conclusions, the standards set forth in Salfi were explicitly directed to social welfare cases and as such are not automatically transferrable

footnote 6 continued
While there are indeed some legitimate state interest at stake here, it has not been shown that they are rationally furthered by the challenged portions of these regulations. (J. Powell, concurring, footnote 2, emphasis added)

to nonwelfare related cases.

"A statutory classification in the area of social welfare is consistent with the Equal Protection Clause of the Fourteenth Amendment if it is rationally based and free from invidious discrimination." Dandridge v. Williams, 397 U.S. 471, 487... .

"These cases quite plainly lay down the governing principle for disposing of constitutional challenges to classifications in this type of social welfare legislation..." supra at 770.

Challenges to government statutes or regulations establishing or denying eligibility for various types of welfare deal with the claimants' entitlement to public funds. The actuarial soundness argument, wHich was crucial to this court's decision in Geduldig v. Aiello, 417 U.S. 484 (1974), provides an alternative basis for the Court's decision in Weinberger v. Salfi which is not applicable to a case involving categorical exclusion from a broad range of public employment. See Weinberger v.

Salfi, supra at 775-776. The District Court in Davis v. Bucher, 451 F. Supp. 791 (E.D. Pa. 1978), which is the only case known to amicus beside the one at bar to have considered the constitutionality of a categorical exclusion of persons with a history of drug usage from a broad range of public employment that and which reached the same result as the District Court herein, noted that

> "...the Supreme Court in Weinberger v. Salfi, 442 U.S. 749, 955 S.Ct. 2457, 45 L. Ed 2d 522 (1975) narrowed the possible application of the irrebuttable presumption doctrine on the basis of the type of 'right' affected by the presumption in that case. However, I agree with the District Court in Gurmankin v. Costanzo, 411 F. Supp. 982 (E.D.Pa. 1976) aff'd 556 F.2d 184 (3rd Cir. 1977), that the La Fleur analysis is appropriate where, as here, an objectively defined group is denied public employment. See also Duran v. City of Tampa, 430 F. Supp. 75, 78 (M.D. Fla. 1977)" supra at 800-801 n.8

Recent decisions by this Court resolve any doubt as to the Court's

continued reliance on the irrebuttable presumption doctrine following Salfi, supra. Turner v. Dept of Employment Security, 423 U.S. 44 (1975); Califano v. Goldfarb, 430 U.S. 199, (1977).

CONCLUSION

The Court should dismiss the Petition for Certiorari on the constitutional questions, or, in the alternative, should affirm the judgments below on the constitutional questions presented.

Dated: Los Angeles,
California
October 29, 1978

Respectfully submitted,

MARILYN HOLLE
MARY-LYNNE FISHER
Western Law Center
for the Handicapped
849 South Broadway
Suite 1201
Los Angeles, California
90014

STUART P. HERMAN
9601 Wilshire Blvd.
Beverly Hills,
California 90210
Of Counsel

Attorneys for Amicus
Curiae

APPENDIX

(Excerpt from Conference Report on HR 12467 amending 29 U.S.C. Sec. 706(6) which bill was passed by Congress on October 15, 1978, and is currently before the President for signature.

"Subject to the second sentence of this paragraph, the term handicapped individual means, for purposes of Titles 4 and 5 of the Act, any person who

(1) has a mental or physical impairment which substantially limits one or more of such person's major life activities,

(2) has record of such impairment, or

(3) is regarded as having such an impairment.

"For purposes of Sections 503 and 504 as such sections relate to employment, such term does not include any individual who is an alcholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose impairment, by reason of such current alcohol or drug use, would constitute a direct threat to property or the safety of others."